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No. 88-446

IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

CONTEMPORARY MISSION, INC.,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

REPLY BRIEF

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CONTEMPORARY MISSION, INC., PETITIONER

V.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

PETITIONER'S REPLY BRIEF

The Government's memorandum in opposition represents an attempt to magnify and characterize all the material aspects of Petitioner's activities, totally ignoring the religious activities which Petitioner's members conducted with its money and property. Using such an analysis, few religious orders or

churches could retain exempt status, since it requires substantial funds and property to conduct an effective spiritual ministry.

The Government's memorandum does not even mention that the lower courts found that only 10 percent of the time of Petitioner's members was spent on fundraising (Pet. App. 17a); the rest was devoted to the halfway house, funeral, counseling, and other ministries described in the Petition (pp. 4-6).

The Government erroneously attempts to distinguish this case from Trinidad v. Sagrada Orden, 263 U.S. 578 (1924), on the basis that there the Philippine Dominican Order largely supported itself with rents from its real property holdings, whereas here Petitioner supported itself with proceeds from the

direct-mail sales of books and similar items. This is a distinction without a difference. Managing property to earn rents is not a more "charitable" or "religious" fundraising than direct mail sales. Indeed, the Government's argument confirms the fact that the Dominicans were far wealthier than Petitioner, since they had extensive landholdings which enabled them to live off their rents.[1]

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[1] The Government's brief in this Court in Sagrada Orden described the Dominican Order's activities as involving "the renting and leasing of the houses and large estates * * *." (Emphasis added.) Petition and Brief of Petitioner, 1921 O.T. No. 353, Trinidad v. Sagrada Orden, p. 12. The Dominicans' income in 1913 was described elsewhere in the Government's brief as follows (id. at 9): "Income received from rents of houses and agricultural estates, 91,141.69 pesos; dividends from the Bank of the Philippines and various industrial companies or corportaions, 95,918.04 pesos; profits from other investments and corporations, 54,239.19 pesos; grand total, 241298.92 pesos." Gross income was 254,702.69 pesos, expenses were

Petitioner, by contrast did not own substantial real property, attempted to sell only religious books and tapes in the early 1970's but could not support itself on these, and thus had to sell other items to finance its ministries. This is not unusual for tax-exempt religious orders -- as our Petition explains (p. 16), tax-exempt religious orders typically sell a wide variety of products both by mail and on the open market to support themselves. Nonetheless, they are tax-exempt, because they use their funds to support their religious ministries, as Petitioner did here.

69,745.88 pesos, and net income was 184,956.81 pesos, amounting to a 72.6 percent profit margin. (Id.)

The Government's attempt to mischaracterize Petitioner's material goods is shameful. The so-called "yacht"[2] was actually a motorboat costing $13,650 (A. 255), used to entertain youth from the halfway house. A $250,000 house in Connecticut, serving as Petitioner's headquarters, chapel and offices, and the residence of five clergy, one family, and two orphans, is not a "mansion". Mercedes diesels with over 250,000 miles each, and a motorcycle, used to commute to the Petitioner's ministries in New York City and elsewhere, are functional transportation, not "luxuries". The $40,000 in expenditures per member was not solely for mere personal expenses,

[2] The Government gives no record reference for its "yacht" mischaracterization.

but also included the capital and current expenses of their religious ministry (see Pet. 4).

At bottom, the Government's position here constitutes gross discrimination against Petitioner merely because Petitioner cut some of its ties with the United States Catholic Conference, and was no longer listed in the Official Catholic Directory. Indeed, the Government argues (Memo. 8) that Petitioner is not a "religious order" because it is not listed in the Official Catholic Directory. Actually, a religious order is any group whose members take and live vows of poverty, chastity and obedience, and devote themselves to religious ministries and necessary fundraising. See 26 Encyclopedia Britannica, "Roman

Catholicism", 923 (15th ed.).

There are hundreds of Buddhist, Protestant, Eastern Orthodox, and other groups that satisfy that definition, and should qualify for tax-exempt status, like "official" Roman Catholic religious orders. See 12 New Catholic Encyclopedia, "Religious Orders (Communities), Protestant", 295 (1967); 12 M. Eliade (ed.), The Encyclopedia of Religion, "Religious Communities", 302, 306-307 (1987); M. Emory and L. Zelanak, "The Tax Exempt Status of Communitarian Religious Organizations", 50 Fordham L. Rev. 1085, 1088 (1982). Unfortunately, as so often happens, the courts and the Government have applied a far more rigorous test to the religious order here mainly because it was not listed in the "Official Catholic Directory", in

violation of both Section 501(c)(3) and the First Amendment. See M. Emory and L. Zelanak, supra.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted

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